

## **PURCHASE AND SALE AGREEMENT**

This 8<sup>th</sup> day of March, 2004:

**The Town of Acton, a municipal corporation with a principal place of business at Town Offices, 472 Main Street, Acton, MA 01720** hereinafter called the Seller or Town, agrees to SELL and

**Quail Ridge Country Club, LLC, a Massachusetts limited liability company with a principal place of business at 178 Great Road, Acton, MA 01720,** hereinafter called the Buyer, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

### **1. DESCRIPTION**

A certain land locked parcel of land in Acton, Middlesex County, Massachusetts shown as Parcel 9 on the Town of Acton, Massachusetts Assessor's Map D-4 which was reportedly taken for taxes by the Town's Collector of Taxes by Instrument dated September 18, 1946, and recorded in the Middlesex South Registry of Deeds at Book 7048, Page 588, on September 19, 1946. The sale involves land only; there are no fixtures involved in this transaction.

### **2. TITLE DEED**

Said premises are to be conveyed by a release deed running to the Buyer, or to the nominee designated by the Buyer by written notice to the Seller at least seven days before the deed is to be delivered as herein provided.

Buyer hereby acknowledges and accepts that Seller's title to the premises as of the date of this Agreement is acceptable to Buyer for all purposes. Buyer shall have rights with respect to defects in Seller's title only with respect to defects in title arising after the date of this Agreement, which Buyer claims in a subsequent written notice to Seller. Buyer hereby waives and accepts title to the premises subject to any defects in title existing as of the date of this Agreement.

In the event that Seller, having used reasonable efforts to cure any defects claimed in a notice given pursuant to the immediately preceding paragraph (subject to the limitation that Seller shall not be obligated to spend more than \$1.00 including attorneys' fees incurred in connection with such efforts), is unable to cure the defects claimed in such notice within thirty (30) days after the date of such notice is given, Seller shall have the right to terminate this Agreement upon notice to Buyer.

### **3. PLANS**

If said deed refers to a plan necessary to be recorded therewith the Seller shall reasonably cooperate with Buyer in the production and delivery of such plan with the deed in form adequate for recording or registration provided that Seller shall not be obligated to spend more than \$1.00

including attorneys' fees incurred in connection with its obligations under the provisions of this Section 3.

**4. REGISTERED TITLE**

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the Buyer to a Certificate of Title of said premises, and the Seller shall reasonably cooperate with Buyer in the production and delivery with said deed all instruments, if any, necessary to enable the Buyer to obtain such Certificate of Title.

**5. TIME FOR PERFORMANCE; DELIVERY OF DEED**

Such deed is to be delivered at 10:00 o'clock A.M. on the 19th day of March, 2004, at the Board of Selectmen's Office, Town Offices, 472 Main Street, Acton, MA, unless otherwise agreed upon in writing, or unless such date is extended pursuant to the terms of the Agreement. It is agreed that time is of the essence of this Agreement.

**6. POSSESSION AND CONDITION OF PREMISES**

Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, (b) not in record violation of building or zoning laws, and (C) free and clear of personal property and equipment belonging to Seller. The Buyer shall be entitled to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

The condition of the Premises as of the date of this Agreement is hereby deemed to meet the requirements of this Section 6. Buyer shall have rights with respect to violations of zoning and building laws only with respect to violations of zoning and building laws arising after the date of this Agreement which Buyer claims in a subsequent written notice to Seller. Buyer shall take the premises subject to any such violations of building and zoning laws existing as of the date of this Agreement.

In the event that Seller, having used reasonable efforts to cure violations claimed in a notice given pursuant to the immediately preceding paragraph (subject to the limitation that Seller shall not be obligated to spend more than \$1.00, including attorneys' fees incurred in connection with such efforts), is unable to cure the violations claimed in such notice within thirty (30) days after the date of such notice is given, Seller shall have the right to terminate this Agreement upon notice to Buyer, in which event the Deposit, and all interest thereon, shall be returned to Buyer, and this Agreement shall be void and without recourse to the parties hereto.

**7. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If the Seller shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto, except that the Seller shall first use reasonable efforts to remove any defects in title, or to deliver of possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of thirty days; provided, however, that in using such reasonable efforts Seller shall not be required to expend more than \$1.00 in the aggregate, inclusive of reasonable attorneys' fees.

**8. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If at the expiration of the extended time the Seller shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

**9. BUYER'S ELECTION TO ACCEPT TITLE**

The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the Seller can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case, subject to the provisions of Section 26 of this Agreement, Seller shall convey such title.

**10. ACCEPTANCE OF DEED**

The acceptance of a deed by Buyer or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

**11. USE OF PURCHASE PRICE TO CLEAR TITLE:**

To enable Seller to make conveyance as herein provided, Seller may (if not paid prior to the Closing Date), at the time of delivery of the deed, use the Purchase Price, or any part thereof, to obtain the instruments necessary to clear the title of any encumbrances or interests which are to be discharged, removed or eliminated by Seller in accordance with the terms hereof, and all required instruments are to be recorded by and at the expense of Buyer (subject to the limits set forth in Section 28, simultaneously with the deed or a reasonable time thereafter, in accordance

with local conveyancing practices. Seller shall not be obligated to spend more than \$1.00 including attorneys' fees, incurred to obtain any instrument required under the provisions of this Section 11.

**12. PAYMENT OF REAL ESTATE TAXES**

Seller's performance hereunder is conditioned upon Buyer making a payment in lieu of taxes, at closing, in accordance with M.G.L. c. 44, § 63A.

**13. CERTIFICATION OF COMPLIANCE WITH TAX LAWS**

In accordance with G.L. c. 62C, § 49A, Buyer shall certify, in the form attached hereto as Exhibit A, under the pains and penalties of perjury, that they have complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes. Such certification shall be made again and executed as of the time of closing.

**14. BENEFICIAL INTEREST DISCLOSURE STATEMENT**

In accordance with G.L. c. 7, § 40J, Buyers shall prepare, execute and file with the Commissioner of the Division of Capital Asset Management a statement, in the form attached hereto as Exhibit B, signed under the pains and penalties of perjury, disclosing the names and addresses of all persons having a beneficial interest in the Premises, at the time of closing.

**15. TOWN MEETING AUTHORIZATION/APPROPRIATION**

Disposition of the premises has been authorized by a vote of the Town Meeting under Article 41 of the Acton Annual Town Meeting of April 2, 2001, a copy of which is attached hereto as Exhibit C.

**16. UNIFORM PROCUREMENT ACT**

The parties enter into this Agreement as a result of the response for competitive proposals sought by the Town pursuant to M.G.L. c. 60, § 77B, M.G.L. c. 30B, § 16, and Article 41 of the Acton Annual Town Meeting of April 2, 2001 (the "RFP"). In accordance with the requests for proposals for the disposition/acquisition of municipal real estate, sealed proposals were received at the Office of the Town Manager and publicly opened and read aloud on or about 12:00 noon, Thursday, July 31, 2003. This Agreement incorporates by reference all terms and conditions of the RFP and of the Seller's award letter, a copy of which is attached as Exhibit D.

**17. BROKERS**

Buyer represents and warrants to Seller that Buyer has not contacted any real estate broker in connection with this transaction and was not directed to Seller as a result of any services or facilities of any real estate broker. Buyer agrees to indemnify Seller against and to hold Seller harmless from any loss, damage, cost (including, without limitation, attorneys' fees) or liability which Seller may incur as a consequence of any breach of the foregoing warranty and representation. The provisions of this paragraph shall survive delivery of the deed.

**18. WARRANTIES AND REPRESENTATIONS**

The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing.

**19. CLOSING DOCUMENTS:**

A. Sellers's Documents. At the Closing, Seller shall deliver to Buyer the following duly executed (and notarized) documents or instruments:

- (1) Release Deed to the Premises in accordance with the provisions of Section 2 of this Agreement (together with the original certificate of title (if available) if any portion of the Real Estate constitutes registered land).
- (2) An affidavit in the form reasonably required by Buyer's title insurer for the purposes of deleting from the owner's and lender's title policies the standard exceptions for parties in possession and mechanics' liens and any liens for sums owed to municipal lighting plants and water companies.
- (3) An affidavit establishing that Seller is not a foreign person as defined in I.R.S. Code Section 1445 (and the regulations promulgated thereunder) in the form recommended by the Internal Revenue Service for the purpose of establishing that the withholding requirements of said Section 1445 do not apply to this transaction.
- (4) Any forms required to comply with Internal Revenue Service reporting requirements.
- (5) All other instruments which may be reasonably necessary to establish Buyer as the record owner of title to the Premises, in accordance with the requirements of Section 2.
- (6) Any documents reasonably required by Buyer's mortgage lender or its

counsel.

- (7) Any other documents required to be delivered at Closing pursuant to this Agreement.
- (8) A statement showing the amount of the payment in lieu of taxes due calculated in accordance with MGL Chapter 44, Section 63A.

B. Buyer's Documents. At closing, Buyer shall deliver to Seller the following duly executed (and notarized) documents or instruments:

- (1) Disclosure of beneficial interest in real property transaction executed as of the closing date.
- (2) Non-delinquency statement required by M.G.L. Chapter 60, Section 77B executed as of the closing date.
- (3) A certified or bank check payable to Seller in the amount set forth in the statement showing the payment in lieu of taxes due, delivered to Buyer in accordance with Section 19.A(8) of this Agreement.
- (4) Acknowledgment regarding Title V inspection requirements.
- (5) Certificate on Noncollusion executed as of the closing date.
- (6) Certificate of the payment of taxes executed as of the closing date.
- (7) Long form Certificate of Buyer's Legal Existence with Amendments for a domestic limited liability company issued by the Secretary of the Commonwealth of Massachusetts, dated within thirty (30) days prior to closing.
- (8) Manager's Certificate as to authority of Buyer to purchase the property and authority of individuals authorized to execute documents with respect to the transaction, dated within thirty (30) days prior to closing.
- (9) Buyer's waiver under the provisions of Section 27 of this Agreement.
- (10) Reimbursement by Buyer for Seller's actual attorneys' fees and expenses with respect to the transactions contemplated under this Agreement, not to exceed \$2,500.

- (11) Instrument evidencing Buyer's obligations under the provisions of Section 29 of this Agreement.
- (12) A certified or bank check payable to Seller in the amount of \$14,000.00, as required by Section 22(b) of this Agreement.
- (13) A Quitclaim Deed to the Buyer's property described in the Quail Ridge Agreement (as hereinafter defined in Section 22 of this Agreement) delivered in accordance with the provisions of the Quail Ridge Agreement (together with the original certificate of title (if available) if any portion of the property constitutes registered land).
- (14) Any other documents required to be delivered at Closing pursuant to this Agreement.

## **20. CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, merges all prior and contemporaneous agreements, understandings, warranties or representations, is binding upon and enures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

## **21. NOTICES**

All notices required or permitted hereunder shall be deemed to have been duly given if in writing and delivered by hand or when mailed by registered or certified mail, return receipt requested, all charges paid, as set forth below:

If to the Buyer, notice shall be sent to:

Ronald B. Peabody, Manager  
Quail Ridge Country Club, LLC  
178 Great Road  
Acton, MA 01720

with a copy to:

Stephen R. Graham, Esq.  
Graham & Harsip, P. C.  
Attorneys at Law

Strawberry Hill Building  
289 Great Road  
Suite 101  
Acton, MA 01720

If to the Seller, notice shall be sent to:

Don P. Johnson  
Town Manager  
Town Office  
472 Main Street  
Acton, MA 01720

with a copy to:

Stephen D. Anderson, Esq.  
Anderson & Kreiger LLP  
43 Thorndike Street  
Cambridge, MA 02141

## **22. PURCHASE PRICE**

The parties acknowledge that simultaneously with the execution of this Agreement the parties have entered into a Purchase and Sale Agreement of even date, by and between the parties, which provides for the acquisition by the Town from Buyer hereunder of a certain parcel of land in Acton, Middlesex County, Massachusetts shown as Parcel 22 on the Town of Acton, Massachusetts Assessor's Map D-4, consisting of approximately six (6) acres of woodland situated in said Acton (the "Quail Ridge Agreement"). A copy of the Quail Ridge Agreement is attached hereto as Exhibit E.

The agreed purchase price hereunder shall consist of (a) performance by Buyer under the terms and provisions of the Quail Ridge Agreement; including, without limitation, the delivery by Buyer and the acceptance and recording by the Town, of a deed, acceptable to Town and counsel for the Town, for the land described in the Quail Ridge Agreement, and (b) delivery by Buyer to Seller hereunder of cash or a certified or bank check in the amount of \$14,000.00 payable to the Town of Acton.

## **23. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.**

If the Seller or Buyer executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the Seller nor the Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.



**24. BUYER'S ACCESS TO PROPERTY AND INDEMNITY TO SELL**

Buyer shall have the right, from time to time, for reasonable cause and upon prior notice and approval of Sellers to enter upon the property at Buyer's sole risk and expense, for the purpose of surveys or other inspection. Buyer shall indemnify and hold Seller harmless from and against any claims for injury to persons or damage to property arising out of Buyer's or Buyer's agents' acts or omissions during the course of such surveys or other inspection.

Buyer's obligation to indemnify Seller as provided herein shall survive the termination of this Agreement and the Delivery of the Deed.

**25. BUYER'S INSPECTION OF PREMISES**

Buyer agrees and acknowledges that Buyer has been given full and ample opportunity to inspect the Premises prior to execution of this Agreement and that Buyer has, in fact, fully inspected the Premises (or declined to do so on an informed and willing basis) and is satisfied in all respects with the condition thereof; that Buyer is purchasing the Premises in an "as is" condition, without representation or warranty of any kind, either express or implied; and that Seller has made no warranty or representations whatsoever on which Buyer has relied, including, without limitation, any warranties or representations concerning (a) the condition of the Premises (including, without limitation, relating to environmental matters), (b) title, (c) zoning, or (d) any other matter relating to the Premises. Further, to the extent Seller may have made any warranties and representations at all concerning the Premises, Buyer hereby releases and discharges Seller from any and all claims, demands, causes of action and suits whatsoever which Buyer now has or at any time hereafter may have which relates in any way to the (i) the condition of the Premises (including, without limitation, relating to environmental matters), (ii) title, (iii) zoning, (iv) any other matter relating to the Premises, or (v) by virtue of any such warranty or representation. The provisions of this paragraph shall survive delivery of the deed of the Premises.

**26. CROSS DEFAULT PROVISION**

The performance of the parties under the Quail Ridge Agreement is a condition to the performance of the parties under this agreement. If the transaction contemplated by the Quail Ridge Agreement does not close, for any reason whatsoever, then, this Agreement shall be null and void without further recourse to the parties hereto.

**27. WAIVER OF CONSTRUCTIVE ACCESS**

Buyer hereby waives, relinquishes and releases any claim whatsoever it may have to any and all rights of access to the premises from any public way over, under or across other property owned by the Town of Acton as of October 1, 2003, whether such rights arise from operation of law, express grant, implication, necessity, prescriptive easement, constructive grant, judicial

decree or any means whatsoever. Buyer shall deliver, at closing, an instrument to be recorded at closing and acceptable to Seller and Seller's counsel and in a form acceptable to Middlesex South District Registry of Deeds for recording in said Registry, evidencing Buyer's waiver hereunder. The provisions of this Section 27 shall survive the delivery of the deed and constitute an ongoing waiver by and agreement and obligation of Buyer.

**28. REIMBURSEMENT OF SELLER'S COST**

Buyer hereby agrees to reimburse the Town at closing for Town's actual attorneys' fees and expenses with respect to the transactions contemplated under this Agreement, provided that such reimbursement shall not exceed \$2,500.00. Buyer shall accept a final accounting of such expenses provided by the Town on or before closing. Buyer may not require backup or further justification for any such expense, unless any such expense appears commercially reckless on its face.

**29. USE OF GOLF FACILITY**

Buyer acknowledges that Buyer operates a golf facility including, without limitation, an 18-hole golf course, a driving range, a club house and other facilities ancillary to the golf course, on property adjacent to the premises (the "Golf Facility"). As part of the consideration of this Agreement and as a condition to Seller's performance hereunder, Buyer hereby agrees, as long as the Buyer operates such a Golf Facility, that Buyer shall make the Golf Facility available to the Town of Acton, at no cost to the Town or its residents, employees or members of the public, for the following uses:

(A) to the Acton/Boxborough Regional Golf Team for practices, matches and tournament play at times to be agreed upon by Seller and Buyer, which terms shall provide for the minimum average number of practices, matches and days of tournament play per month as set forth on Exhibit F; and

(B) to the Town of Acton, one day per year, which day may be any day of the Town's choosing (provided that the Town shall give Buyer 180 day written notice within the months of May, June, July, August, September, or October), for the purpose of the Town hosting a fund-raising event for the benefit of the Recreation Department of the Town.

Buyer shall deliver at closing an instrument to be recorded at closing and acceptable to Seller and Seller's counsel and in a form acceptable to Middlesex South Register of Deeds for recording in said Registry, evidencing Buyer's obligations under the provisions of this Section 29, which shall run with the land and be binding upon Buyer's successors and assigns.

SELLERS:

TOWN OF ACTON  
By its Board of Selectmen

\_\_\_\_\_  
Walter Foster, Chairman

\_\_\_\_\_  
Peter K. Ashton, Vice-Chairman

\_\_\_\_\_  
F. Dore Hunter, Clerk

\_\_\_\_\_  
Robert Johnson, Member

\_\_\_\_\_  
William H. Schupert, Member

BUYER:

QUAIL RIDGE COUNTRY CLUB LLC

\_\_\_\_\_  
By Ronald B. Peabody  
Its Manager, duly authorized hereunto

**EXHIBIT A**

**Copy of Certificate of Tax Compliance**

**EXHIBIT B**

**Copy of Beneficial Interest Disclosure Statement**

**EXHIBIT C**

**Copy of Vote of the Town Meeting under Article 41 of the Acton Annual Town Meeting of  
April 2, 2001**

**EXHIBIT D**

**Copy of Seller's Award Letter**

**EXHIBIT E**

**Copy of Quail Ridge Agreement**



**Exhibit F**  
**Acton/Boxborough Regional Golf Team Frequency**

Practices: minimum average of 12 per month,

Matches and Tournament play: minimum average of 4 per month, and

act/RFP/m/ps-quail-1F